

Title 135 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 7 - FINANCIAL RESPONSIBILITY

001 General Requirements

001.01 Each application for a mineral exploration hole permit or a renewal shall be accompanied by a written estimate of the costs to undertake measures necessary to prevent contamination of ground water having 10,000 mg/l or less TDS during and after cessation of operations, including, but not limited to, the proper plugging of a hole(s).

001.02 After the submission of the estimate and as a prerequisite to commencing operations, the Department shall require the applicant to provide evidence, to its satisfaction, of financial responsibility that monies are available in an amount estimated by the Director to be sufficient to:

001.02A Undertake the measures specified in 001.01 above; and

001.02B Cover the additional estimated costs to the State which may arise from applicable public contracting requirements or the need to bring personnel and equipment to the permit area to complete the restoration after its abandonment by the permittee.

001.03 Each permittee shall keep its evidence of financial responsibility on file with the Department current and accurate. Any change in the form or nature of a permittee's method of maintaining the financial responsibility required shall be filed with and approved by the Department prior to any such change.

001.04 Evidence of financial responsibility does not operate to any extent as a limitation upon the obligation of the permittee to comply with its permit or complete any restoration.

001.05 Failure of the permit applicant to provide evidence of financial responsibility shall be sufficient cause for withholding issuance of a permit or the revocation of an existing permit.

002 Methods of Providing Financial Responsibility

The applicant shall choose among the following options in establishing financial responsibility:

002.01 A surety bond, payable to the State, and conditioned that, to the amount of such bond, the State shall be reimbursed for all costs arising in connection with the abandonment, default or other inability of the permittee to meet the requirements of these regulations and/or permit conditions and upon determination of forfeiture by the Director pursuant to section 005 below. The bond shall be executed by a responsible surety company authorized to do business in the State of Nebraska.

002.02 A collateral bond, in which case the applicant shall deposit, with a bank acceptable to the Department, cash, negotiable bonds issued by the United States or the State; or negotiable certificates of deposit; or deliver to the Department an irrevocable letter of credit of any bank or other savings institution organized or transacting business in the United States. The bank shall receive and hold any collateral bond in the name of the State, in trust, for the purposes for which the deposit is posted. The applicant shall pay all costs of the trust, and shall be paid all interest accruing to the account of the trust.

002.03 Any combination of the above.

003 Terms and Conditions of the Bond

003.01 Replacement of Bonds

003.01A The Department may allow the permittee to replace an approved bond with another type of bond described in 002 above, if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.

003.01B The Department shall not release existing bonds until the permittee has submitted and the Department has approved acceptable replacement bonds.

003.02 Surety bonds shall be subject to the following conditions:

003.02A The bond may be subject to cancellation by the surety company; provided that, no such cancellation, nor release of the surety company's liability under the bond, shall be effective sooner than one hundred twenty days following receipt by the Department and the permittee of written notice of cancellation sent by certified mail, return receipt requested. Such one hundred twenty day period shall be measured from the later of the receipt by the Department or permittee of such notice. In the event of cancellation, the permittee must provide a replacement bond in accordance with subsection 003.01 no later than forty-five days prior to the effective date of cancellation specified in the notice. Failure of the permittee to obtain a replacement bond shall result in revocation of its bond.

003.02B The bond shall provide that the surety and the permittee shall be jointly and severally liable to the amount of such bond.

003.02C The bond shall provide that:

003.02C1. The surety will give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the surety, or alleging any violation of regulatory requirements that could result in suspension or revocation of the surety's license to do business;

003.02C2. In the event the surety becomes unable to fulfill its obligations under the bond for any reason, notice shall be given immediately to the permittee and the Department; and

003.02C3. Upon the incapacity of a surety by reason of bankruptcy, insolvency or suspension or revocation of its license, the permittee shall obtain a replacement bond within sixty days. Failure of the permittee to obtain a replacement bond shall result in revocation of its permit.

003.03 Collateral bonds, except for letters of credit, shall be subject to the following conditions:

003.03A The Department shall value collateral at its current market value, not face value; and

003.03B The Department shall only accept certificates of deposit which are automatically renewable.

003.04 Irrevocable letters of credit shall be subject to the following conditions:

003.04A The letter shall be payable to the State of Nebraska in part or in

full upon demand and receipt from the Department of a notice or forfeiture pursuant to section 005.03 below;

003.04B The letter shall contain terms which authorize the Department to draw upon the letter, in full, to obtain cash collateral in the event the permittee has failed to furnish a replacement bond at least thirty days prior to the expiration of the letter; and

003.04C The total amount of letters of credit that will be accepted from any bank for any permittee, on all permits held by the permittee, shall not exceed the bank's maximum legal lending limit as required by the appropriate Nebraska or Federal banking regulatory agency.

003.04D The letter of credit shall provide that:

003.04D1. The bank shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the bank, or alleging any violations of regulatory requirements which could result in suspension or revocation to the bank's charter or license to do business;

003.04D2. In the event the bank becomes unable to fulfill its obligations under the letter of credit for any reason, notice shall be given immediately to the permittee and the Department; and

003.04D3. Upon the incapacity of a bank by reason or bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall obtain a replacement bond within sixty days. Failure of the permittee to obtain a replacement bond shall result in revocation of its permit.

004 Release of the Bonds

The permittee may file a request with the Department for the release of all or part of a bond. Following public notice, the Department shall release a bond, in whole or in part, when it is satisfied any restoration covered by the bond or portion thereof has been accomplished as required by these regulations.

005 Forfeiture of Bonds

005.01 The Director shall declare all or any appropriate part of a bond for any permit as forfeited if the Department determines that:

005.01A The permittee has violated any of the terms or conditions of the bond and has failed to take adequate corrective action; or

005.01B The permittee has failed to conduct its operations in accordance with the Nebraska Environmental Protection Act, these regulations and the permit within the time period required, and that it is necessary, in order to fulfill the requirements of the permit and any restoration, to have someone other than the permittee correct or complete such work.

005.02 The Director may withhold declaration of forfeiture if the permittee and surety, if any, agree to a compliance schedule to comply with the violations of the bond or permit conditions.

005.03 In the event a determination to forfeit bond is made, the Director shall:

005.03A Send written notification by certified mail, return receipt requested, to the permittee and the surety, if any, on the bond, of the Department's determination to forfeit all or part of the bond and the reasons for the forfeiture, including a finding of the amount to be forfeited;

005.03B The permittee may request a hearing on the issue of whether the bond shall be forfeited in accordance with the procedures specified in Neb. Rev. Stat. §§ 8101507(1)(2) and Title 115 of the Department's Rules of Practice and Procedure.

005.03C An appeal from a final decision of the Director shall be in accordance with Neb. Rev. Stat. §§ 81-1509.

Enabling Legislation: §§ 81-1505(9)(c)

Legal Citation: Title 135, Ch. 7, Nebraska Department of Environmental Control

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